

# **EXHIBIT 1**

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 LOUIS F. PETROSSI,

7 Defendant.

16-CR-234 (BMC)

United States Courthouse  
Brooklyn, New York

May 2, 2017  
9:30 a.m.

8 -----x  
9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
10 BEFORE THE HONORABLE BRIAN M. COGAN  
11 UNITED STATES DISTRICT JUDGE  
12 BEFORE A JURY

12 APPEARANCES

13 For the Government: BRIDGET M. ROHDE, ESQ.  
14 Acting United States Attorney  
15 Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
16 BY: MARK E. BINI  
LAUREN HOWARD ELBERT  
Assistant United States Attorneys

17 For the Defendant: PETRILLO KLEIN & BOXER LLP  
18 655 Third Avenue  
22nd Floor  
19 New York, New York 10017  
20 BY: NELSON A. BOXER, ESQ.  
JACK MICHAEL GENBERG, ESQ.

21 Court Reporter: LINDA D. DANIELCZYK, RPR, CSR, OCR  
22 Phone: 718-613-2330  
23 Fax: 718-804-2712  
Email: LindaDan226@gmail.com

24 Proceedings recorded by mechanical stenography. Transcript  
25 produced by computer-aided transcription.

JURY CHARGE

1 Like I told you with regard to taking notes, don't get hung up  
2 on reading while I'm speaking, you're going to have a copy of  
3 these instructions, so don't feel you have to have them  
4 memorized here.

5 Now, the defendant is formally charged in a charging  
6 instrument, which in this case is called an indictment. We're  
7 going to give you a copy of the indictment to take back with  
8 you into the jury room.

9 As I've instructed you, the indictment is a charge  
10 or accusation. It is not evidence. This indictment has four  
11 counts or charges by which you will be called upon to render a  
12 verdict. Whether you find the defendant guilty or not guilty  
13 as to one count, however, should not affect your verdict as to  
14 another count. You have to consider each count separately and  
15 return a separate verdict of guilty or not guilty on each  
16 count.

17 Now each one of these four charges implicates the  
18 concept of knowledge and intent. As a general rule, the law  
19 holds individuals accountable only for conduct in which they  
20 intentionally engage.

21 A person acts knowingly if he acts intentionally and  
22 voluntarily and not because of ignorance, mistake, accident,  
23 or carelessness. Whether a defendant acted knowingly may be  
24 proven by his or her conduct and by all of the facts and  
25 circumstances surrounding the case.

JURY CHARGE

1           A person acts intentionally when he acts  
2     deliberately and purposefully; that is, the defendant's acts  
3     must have been the product of his conscious objective rather  
4     than the product of a mistake or accident. It's sufficient  
5     that a defendant intentionally engages in conduct which the  
6     law forbids. The government is not required to prove that a  
7     defendant is aware of the law that actually forbids his  
8     conduct.

9           Now let me instruct you on the law of conspiracy.  
10    This applies to Counts One, Two and Three of the indictment.  
11    Those are all conspiracy charges.

12           The crime of conspiracy is an independent crime, an  
13    entirely separate and different offense from the underlying  
14    crime that the defendant is alleged to have agreed to  
15    commitment. Before you may convict the defendant of  
16    conspiracy, the following two essential elements must be  
17    established beyond a reasonable doubt.

18           First, the government has to prove beyond a  
19    reasonable doubt that there was a conspiracy, the conspiracy  
20    existed. And second, the government has to prove that the  
21    defendant knowingly and intentionally became a member of that  
22    conspiracy.

23           Let me go over each of those two elements in greater  
24    detail.

25           The first is that a conspiracy existed. What is a

JURY CHARGE

1 conspiracy? A conspiracy is an agreement between two or more  
2 people to accomplish some unlawful purpose. The gist or  
3 essence of the conspiracy is an unlawful agreement to violate  
4 the law.

5 A conspiracy is, therefore, sometimes referred to as  
6 a partnership in criminal purpose in which each member of the  
7 conspiracy becomes the agent of every other member. To  
8 establish a conspiracy, the government is not required to  
9 prove that the coconspirators entered into a solemn formal  
10 contract orally or in writing stating that they have formed a  
11 conspiracy to violate the law. The government need only prove  
12 beyond a reasonable doubt that two or more persons explicitly  
13 or implicitly came to an understanding to achieve the  
14 specified unlawful object.

15 Of course, you can find that the existence of an  
16 agreement between two or more persons to commit a crime has  
17 been established by direct evidence. But since a conspiracy  
18 is by its very nature characterized by secrecy, direct proof  
19 may not be available; therefore, you may infer the existence  
20 of a conspiracy from the circumstances of the case and the  
21 conduct of the parties involved. In other words, in the  
22 context of conspiracy cases, actions may speak louder than  
23 words.

24 In determining whether or not the government has  
25 proven beyond a reasonable doubt that the charged agreement,

JURY CHARGE

1 the conspiracy, existed here, you may consider all the actions  
2 and statements of all those who you find to be participants.  
3 Ask yourselves whether they were acting together for the  
4 accomplishment of the charged criminal purpose. If they were,  
5 this first element is satisfied. If, however, they were  
6 acting together for some purpose unrelated to the underlying  
7 crime, even a separate criminal purpose, the government would  
8 not have satisfied the first element.

9 It's not necessary for the government to prove that  
10 the ultimate objectives of the conspiracy were successfully  
11 accomplished. It's enough if the government has proved that  
12 two or more persons, one of whom is the defendant, in any way,  
13 expressly or impliedly came to a common understanding to  
14 violate the law. This means that you may find the defendant  
15 guilty of conspiracy; in other words, agreeing to commit  
16 securities fraud, wire fraud and money laundering, even if you  
17 find that the objects of the conspiracy were never actually  
18 committed.

19 If upon all the evidence, direct and circumstantial,  
20 you're satisfied beyond a reasonable doubt that the minds of  
21 at least two of the alleged conspirators met, and that they  
22 agreed to work together to accomplish the object of the  
23 conspiracy charged in the indictment, then the first element,  
24 the existence of the conspiracy, has been established. If,  
25 however, you find that the government has not proven beyond a

JURY CHARGE

1 reasonable doubt that the conspiracy charged in the indictment  
2 did exist, then you have to find the defendant not guilty.

3 Now, the second element that the government has to  
4 prove beyond a reasonable doubt is that the defendant  
5 knowingly and willfully became a member of the charged  
6 conspiracy. An individual may become a member of a conspiracy  
7 without full knowledge of all the details or the scope of the  
8 conspiracy, or the identities of each and every member of the  
9 conspiracy. On the other hand, a person who has no knowledge  
10 of the conspiracy but happens to act in a way which furthers  
11 some objective or purpose of the conspiracy, does not thereby  
12 become a conspirator.

13 Moreover, mere association by a defendant with a  
14 conspirator does not make the defendant a member of the  
15 conspiracy, even if he knows of the conspiracy. In other  
16 words, knowledge isn't enough, the defendant himself must  
17 intentionally participate in the conspiracy with the purpose  
18 of helping to achieve at least one of its unlawful objects.

19 However, the extent of a defendant's participation  
20 in a conspiracy has no bearing on the issue of guilt. Some  
21 conspirators might play major roles, others may play minor  
22 roles. An equal role is not what the law requires.

23 Before you find that the defendant was a member of a  
24 conspiracy, the evidence in the case must show beyond a  
25 reasonable doubt that the conspiracy was knowingly formed, and

JURY CHARGE

1 that the defendant willfully participated in the unlawful plan  
2 with the intent to advance or further some objective or  
3 purpose of the conspiracy.

4 Now, you will see, as I continue with these  
5 instructions, that some kind of conspiracy charges require  
6 proof of an additional element, others don't, but all of them  
7 have at least these two elements that I've just explained to  
8 you in common; that is the existence of a conspiracy and the  
9 defendant's willing participation in it.

10 Let me now turn to the specific counts in the  
11 indictment. Remember, again, you have to consider each count  
12 separately. I'm going to give you a verdict form which  
13 there's a separate finding for each count.

14 Count One of the indictment charges the defendant  
15 with conspiracy to commit securities fraud. Specifically,  
16 Count One alleges, in relevant part, that between  
17 December 2009 and April 2011, the defendant, together with  
18 others -- is that right? Between December 2009 and April of  
19 2015, the defendant, together with others, conspired to use  
20 and employ manipulative and deceptive devices by: A,  
21 employing one or more devices, schemes, and artifices to  
22 defraud; B, making one or more untrue statements of material  
23 fact and omitting to state one or more material facts  
24 necessary in order to make the statements made in light of the  
25 circumstances under which they were made, not misleading, and;



JURY CHARGE

1 C, engaging in one or more acts, practices and courses of  
2 business which would and did operate as a fraud and deceit  
3 upon one or more investors and potential investors in  
4 ForceField in connection with the purchase and sale of  
5 investments in ForceField, directly and indirectly, by use of  
6 means and instrumentalities of interstate commerce and the  
7 mail.

8 Now that's a mouthful, ladies and gentlemen, I'm  
9 going to break it down for you.

10 First, the relevant statutes that we're talking  
11 about are the general conspiracy statute, that's in  
12 Section 371 Title 18 of the U.S. Code, and that statute states  
13 simply, if two or more persons conspire either to commit any  
14 offense against the United States, and one or more of such  
15 persons do any act to affect the object of the conspiracy,  
16 each shall be punished or shall be guilty of a crime.

17 The other statute is Section 78j(b) of Title 15 of  
18 the U.S. Code, which says that it shall be unlawful for any  
19 person, directly or indirectly, by use of any means or  
20 instrumentality of interstate commerce, or of the mails, or of  
21 any facility of any national securities exchange, to use or  
22 employ, in connection with the purchase or sale of any  
23 security, any manipulative or deceptive device or contrivance.

24 In order to prove that the defendant committed the  
25 crime charged in Count One, the government must prove each of

JURY CHARGE

1 the following elements beyond a reasonable doubt:

2 First, that a conspiracy to commit securities fraud  
3 existed.

4 Second, that the defendant knowingly and  
5 intentionally became a member of the conspiracy. Those are  
6 the first two elements of all conspiracies that I just  
7 explained to you.

8 And third, that an overt act occurred; that is,  
9 someone within the conspiracy took some action that advanced  
10 the goals of the conspiracy.

11 As to the second and third elements -- I'm sorry, as  
12 to the first and second elements, I just told what you it  
13 means to conspire. Those instructions apply to this count.

14 The third element is that an overt act occurred;  
15 that is, someone within the conspiracy took some action that  
16 advanced the goals of the conspiracy.

17 Now the indictment alleges the following overt acts.  
18 The first overt act alleged is that on or about September 6th,  
19 2010, Richard St Julien caused ForceField to enter into a  
20 finder's fee agreement with AOHC.

21 Next, another overt act, in or around July 2012,  
22 Mr. Petrossi gave a presentation recommending the purchase of  
23 ForceField stock to attendees of an investor conference during  
24 which he stated, "I don't recommend anything that I don't  
25 invest at least a hundred thousand of my own money, and I

JURY CHARGE

1 invest usually from a hundred thousand up to a million  
2 dollars."

3 Third overt act. On or about September 9, 2013,  
4 Christopher Castaldo sent an email to Richard St Julien  
5 stating "Amazing, when we don't work, you barely trade. Call  
6 me when you were in New York, we don't work for free."

7 Forth overt act. On or about August 29th, 2014,  
8 Mr. Petrossi sent an email to Richard St Julien in which he  
9 stated that we took in more than \$200,000 at two investor  
10 conferences.

11 Fifth overt exact. On or about September 22nd,  
12 2014, Mr. Petrossi sent a text message to Richard St Julien in  
13 response to a request by Richard St Julien to purchase  
14 ForceField shares, in which he stated, "I will go to the bank  
15 be get 5K, does that help? I'm going to buy 1,000 shares  
16 within the hour."

17 To satisfy this third overt act element, the  
18 government has to prove beyond a reasonable doubt that at  
19 least one of the conspirators, not necessarily the defendant,  
20 committed at least one overt act alleged in the indictment for  
21 the purpose of furthering some objective of the conspiracy.  
22 For the government to satisfy this element, it's not required  
23 to prove all of the overt acts that I just read to you, or  
24 that any particular overt act was committed at precisely the  
25 time alleged in the indictment, nor do you all have to agree

JURY CHARGE

1 on the same overt act. It's sufficient if each one of you is  
2 convinced beyond a reasonable doubt that at least one overt  
3 act occurred, and that it occurred at about the time and place  
4 stated.

5 In other words, for this conspiracy charge, there  
6 has to be something more than an agreement, some overt step or  
7 action must have been taken by the defendant, or one of the  
8 conspirators in furtherance of the conspiracy.

9 The overt act element, to put it another way, is a  
10 requirement that the agreement went beyond the mere talking  
11 and agreement stage. Bear in mind, however, that the overt  
12 act standing alone may be an innocent lawful act. Frequently,  
13 however, an apparently innocent act sheds its harmless  
14 character if it is a step in carrying out, promoting, aiding  
15 or assisting the conspiratorial scheme; therefore, you're  
16 instructed that the overt act does not have to be an act which  
17 in and of itself is criminal or constitutes an objective of  
18 the conspiracy.

19 Similarly, it's not necessary for the government to  
20 prove that each member of the conspiracy committed or  
21 participated in the overt act. It's sufficient if you find  
22 that at least one overt act was, in fact, performed by at  
23 least one conspirator, whether the defendant or another  
24 coconspirator, to further the conspiracy within the time frame  
25 of the conspiracy.

JURY CHARGE

1 Now, in order for you to determine whether the  
2 government has proven the charge of conspiracy in Count One, I  
3 need to explain the substantive crime of securities fraud.

4 So the claim, ladies and gentlemen, is for  
5 conspiracy, but a claim is that the conspirators were seeking  
6 to commit the substantive crime of securities fraud. So for  
7 you to determine whether a conspiracy has been proven, I now  
8 need to tell you what a securities fraud is.

9 Remember, therefore, that as to this count, the  
10 issue is not whether the defendant actually committed a  
11 securities fraud, rather the issue is whether he entered into  
12 a conspiracy to commit a securities fraud.

13 To prove the substantive crime of securities fraud,  
14 the government has to establish each of the following elements  
15 beyond a reasonable doubt:

16 First, that in connection with the purchase or sale  
17 of a security, the defendant did any one or more of three  
18 unlawful acts. I'm going to call these going forward "three  
19 unlawful acts." They are as follows:

20 One, employed a device, scheme or artifice to  
21 defraud, or;

22 Two, made an untrue statement of a material fact or  
23 omitted to state the material fact which made what was said  
24 under the circumstances misleading, or;

25 Three, engaged in an act, practice, or course of

JURY CHARGE

1 business that operated or would operate as a fraud or deceit  
2 upon a purchaser or a seller.

3 Second, that the defendant acted willfully,  
4 knowingly, and with the intent to defraud.

5 And third, that the defendant knowingly used or  
6 caused to be used any means or instruments of transportation  
7 or communication in interstate commerce, or the use of the  
8 mails in furtherance of the fraudulent conduct.

9 Let me go over those one at a time. As I just  
10 explained to you, the first element that the government would  
11 have to prove beyond a reasonable doubt to prove a securities  
12 fraud is that in connection with the purchase of a sale of a  
13 security, the defendant did any one or more of the three  
14 unlawful acts. The government doesn't need to prove all three  
15 of the unlawful acts, any one will be sufficient to satisfy  
16 this element if you find that the defendant committed it. But  
17 here, you have to be unanimous as to which unlawful act the  
18 government has proven beyond a reasonable doubt. You all have  
19 to agree on the same unlawful act, and if you can't, then the  
20 defendant is not guilty.

21 A device, scheme or artifice to defraud is merely a  
22 plan for the accomplishment of any objective. Fraud is a  
23 general term which engraces all efforts and means that  
24 individuals devise to take advantage of others.

25 The law which the defendant is alleged to have

JURY CHARGE

1 violated prohibits all kinds of manipulative and deceptive  
2 acts. Among these acts is orchestrating or manipulating  
3 trading in securities. The essential element of manipulation  
4 is the deception of investors, deceiving them into believing  
5 that prices at which they purchased and sell securities are  
6 determined by the natural interplay of supply and demand.  
7 Consequently, any conduct that's designed to deceive or  
8 defraud investors by controlling or artificially affecting the  
9 price of securities is prohibited. Market manipulation may be  
10 accomplished through a variety of means or ways undertaken  
11 either alone or in combination.

12 Now you need not find that the defendant actually  
13 participated in any securities transaction if the defendant  
14 was engaged in fraudulent conduct that was in connection with  
15 a purchase or a sale. The in connection with aspect of this  
16 element is satisfied if you find that there was some nexus or  
17 relation between the allegedly fraudulent conduct and the sale  
18 or purchase of securities. Fraudulent conduct may be in  
19 connection with the purchase or sale of securities if you find  
20 that the fraudulent conduct touched upon a securities  
21 transaction.

22 It's not necessary for you to find that the  
23 defendant was the actual seller or offerer of the securities,  
24 however you must find that the defendant participated in the  
25 scheme of fraudulent conduct that involved the purchase or

JURY CHARGE

1 sale of stock.

2 With regard to the alleged misrepresentations and  
3 omissions, you must determine whether the statement was true  
4 or false when it was made. And in the case of alleged  
5 omissions, whether the omission was misleading. If you find  
6 that the government has established beyond a reasonable doubt  
7 that a statement was false or omitted, you must next determine  
8 whether the fact was stated was material under the  
9 circumstances.

10 A material fact is one that would have been  
11 significant to a reasonable investor's investment decision.  
12 Now, in order for you to find that a misrepresentation was  
13 material, the government must prove beyond a reasonable doubt  
14 that there was a substantial likelihood that the misstated  
15 fact would have been viewed by the reasonable investor as  
16 having significantly altered the total mix of information  
17 available. To significantly alter the total mix of  
18 information available, means to meaningfully affect a  
19 reasonable investor's consideration about whether they should  
20 buy or sell and at what price. However, to be material, a  
21 misstatement need not determine any particular outcome.

22 In determining whether any false or omitted  
23 statement is material, you may consider any contract that a  
24 witness has signed. Now this is not to say that the  
25 government must prove that the misrepresentation would have



JURY CHARGE

1 deceived a person of ordinary intelligence. Once you find  
2 that there was material misrepresentation or omission of  
3 material facts, it does not matter whether the intended  
4 victims were gullible buyers or sophisticated investors  
5 because the securities laws protect the gullible and  
6 unsophisticated as well as the experienced investor. Nor does  
7 it matter whether the alleged unlawful conduct was successful  
8 or not, or that the defendant profited or received any  
9 benefits as a result of the alleged scheme. Success is not an  
10 element of the crime charged. However, if you find that the  
11 defendant did profit from the alleged scheme, you may consider  
12 that in relation to the third element of intent, which is what  
13 I'm going to cover next.

14 Not next, the one after the second element.

15 The second element that the government has to prove  
16 beyond a reasonable doubt is that the defendant participated  
17 in the scheme to defraud knowingly, willfully, and with the  
18 intent to defraud.

19 Now I've already explained to you what it means to  
20 act knowingly. Willfully means to act knowingly and  
21 purposefully with an intent to do something that the law  
22 forbids. In determining whether the government acted  
23 willfully, the government is not required to establish that  
24 the defendant knew he was breaking any particular law or rule.

25 In the context of securities laws, with the intent

JURY CHARGE

1 to defraud, means to act knowingly and with an intent to  
2 deceive. The question of whether a person acted knowingly  
3 willfully and with the intent to defraud is a question of fact  
4 for you to determine like any other fact question. This  
5 question involves a person's state of mind.

6 Direct proof of knowledge and fraudulent intent is  
7 almost never available to demonstrate someone's state of mind.  
8 It would be a rare case where it could be shown that a person  
9 wrote or stated that at a given time in the past he committed  
10 an act with fraudulent intent. Such direct proof is not  
11 required. The ultimate fact of knowledge and criminal intent,  
12 though subjective, may be established by circumstantial  
13 evidence based on a person's outward manifestations, his  
14 words, his conduct, his acts and all the surrounding  
15 circumstances disclosed by the evidence and a rational or  
16 logical inferences that may be drawn from that.  
17 Circumstantial evidence if believed is of no less value than  
18 direct evidence.

19 Since an essential element of the crime charged is  
20 intent to defraud, it follows that good faith on the part of  
21 the defendant is a complete defense to a charge of securities  
22 fraud. The defendant, however, has no burden to establish a  
23 defense of good faith. The burden is on the government to  
24 prove fraudulent intent and consequent lack of good faith  
25 beyond a reasonable doubt. A belief by the defendant that

JURY CHARGE

1 ultimately everything would work out so that no one would lose  
2 any money does not require that you find he acted in good  
3 faith. No amount of honest belief on the part of a defendant  
4 that the scheme will ultimately make a profit for the  
5 investors will excuse fraudulent actions or false  
6 representations by him to obtain money.

7 The government may prove that the defendant acted  
8 knowingly in either of two ways. First, it's sufficient that  
9 the evidence satisfies you beyond a reasonable doubt that the  
10 defendant was actually aware he was making or causing a false  
11 statement to be made.

12 Knowledge may be found from circumstances that would  
13 convince an average ordinary person. Thus, you may find that  
14 the defendant knew that the statement was false if you  
15 conclude that he made it with a deliberate disregard of  
16 whether it was true or false and with a conscious purpose to  
17 avoid learning the truth. Guilty knowledge, however, cannot  
18 be established by demonstrating mere negligence or foolishness  
19 on the part of the defendant.

20 Now, the third and final element that the government  
21 has to prove beyond a reasonable doubt is that the defendant  
22 knowingly used or caused to be used the mails or any means or  
23 instrumentalities of transportation or communication in  
24 interstate commerce, including telephones in furtherance of a  
25 scheme to defraud.

JURY CHARGE

1           It's not necessary that a defendant be directly or  
2 personally involved in any mailing, emailing, telephone calls  
3 or telephone messages. If the defendant was an active  
4 participant in the scheme and took steps or engaged in conduct  
5 which he knew or reasonably could have foreseen would  
6 naturally and probably result in the use of the mails or the  
7 internet or telephone lines, then you may find that he caused  
8 the mails or these other instrumentalities of interstate  
9 commerce to be used. When one does an act with the knowledge  
10 that the use of interstate means or communication will follow  
11 in the ordinary course of business, or where such use  
12 reasonably can be foreseen, even though not actually intended,  
13 then he causes such means to be used.

14           It's not necessary that the items sent through the  
15 mails or over the internet or communicated by telephone  
16 contain the fraudulent material or anything criminal or  
17 objectionable. The matter mailed or communicated by telephone  
18 may be entirely innocent.

19           The use of telephones, the internet or the mail need  
20 not be central to the execution of the scheme and may even be  
21 incidental to it. All that is required is that the use of the  
22 telephones, the internet or the mail bears some relation to  
23 the object of the scheme or fraudulent conduct. In fact, the  
24 actual offer or sale need not be accomplished or accompanied  
25 by the use of telephone or internet or the mail so long as the

JURY CHARGE

1 defendant is still engaged in actions that are part of a  
2 fraudulent scheme.

3 I remind you that Count One does not allege that a  
4 securities fraud was actually committed, and the government  
5 does not need to prove that a securities fraud was committed  
6 or attempted for you to find the defendant guilty of this  
7 count. Rather, Count One charges the defendant with  
8 conspiring to commit securities fraud.

9 All right, we're getting there, ladies and  
10 gentlemen, this is Count Two we're now going to talk about.

11 That charges the defendant with conspiracy to commit  
12 a wire fraud. Specifically it alleges in relevant part that  
13 between December 2009 and April 2015, the defendant, together  
14 with others, conspired to device a scheme and artifice to  
15 defraud investors and potential investors in ForceField, and  
16 to obtain money and property from them by using materially  
17 false and fraudulent pretenses, representations and promises,  
18 and for the purpose of executing such a scheme and artifice to  
19 transmit and cause to be transmitted by means of wire  
20 communication in interstate and foreign commerce writings,  
21 signs, signals, pictures and sounds.

22 Now, the relevant statute for this is Section 1349  
23 under Title 18 of the U.S. Code. It states that any person  
24 who attempts or conspires to commit wire fraud shall have  
25 committed a crime, an offense.